

1 Randall D. Wilkins, State Bar No. 009350
Paul V. Bonn, State Bar No. 001516
2 Brian J. Campbell, State Bar No. 013177
D. Michael Hall, State Bar No. 010267
3 BONN & WILKINS, CHARTERED
805 North Second Street
4 Phoenix, Arizona 85004
(602) 254-5557

5 Eugene O. Duffy
6 Wisconsin Bar No. 1015753
William A. Wiseman
7 Wisconsin Bar No. 1015696
O'NEIL, CANNON, HOLLMAN, DE JONG S.C.
8 Suite 1400, 111 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4803
9 (414) 276-5000
Attorneys for Plaintiffs

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN THE ARIZONA TAX COURT**

12 SUSAN MORAN and JOHN UDALL,
13 individually and as representatives of the class
14 comprised of federal employees who paid
15 Arizona income taxes on federal retirement
contributions during one or more of the years
1985 to date,

16 **Plaintiffs,**

17 **v.**

18 GALE L. GARRIOTT, in his capacity as
Director of the Arizona Department of
19 Revenue, the ARIZONA DEPARTMENT OF
REVENUE of the State of Arizona,

20 **Defendants.**

21 SUSAN MORAN and JOHN UDALL AND
22 THEIR ATTORNEYS, BONN & WILKINS,
CHARTERED and O'NEIL, CANNON,
23 HOLLMAN, DE JONG, S.C.,

24 **Counterclaimants,**

25 **v.**

26 STATE OF ARIZONA, ex rel., the ARIZONA
DEPARTMENT OF REVENUE,

27 **Counterdefendants.**

No. TX 97-00119
No. TX 97-00131
No. TX 97-00150
(Consolidated)

**STIPULATION
OF
SETTLEMENT**

(Assigned to the Honorable Mark W.
Armstrong)

1 IT IS HEREBY STIPULATED AND AGREED, by and between the parties,
2 subject to the approval of the Tax Court and upon notice and opportunity for
Claimants to be heard as follows:

3 **Federal Employee Retirement Contributions**
4 **(FERC)**

5 **SETTLEMENT AGREEMENT**

6 **DEFINITIONS**

- 7
- 8 1. "Settlement" shall mean the settlement agreement set forth in this Stipulation of
9 Settlement.
- 10 2. "Claim" or "Claims" shall mean a written request by which an Arizona taxpayer,
11 including the taxpayer's authorized representative, has previously requested
12 adjustment of his/her tax liability or a refund for a particular past tax year in
13 connection with taxes paid on mandatory amounts contributed by the taxpayer to a
14 federal employee retirement program. The term "Claim" shall include any legally
adequate request made by amended tax return, refund request, correspondence or
through any protective claim form whether filed on forms created and supplied by the
Department of Revenue, or on forms supplied by the taxpayer.
- 15 3. "Department" shall mean the State of Arizona and the Arizona Department of
16 Revenue, including their employees, agents and representatives.
- 17 4. "FILED," "FILING" or "FILES" (when appearing herein in all capital letters) shall
18 mean delivered by U.S. mail or hand-delivery to the Department at one of its
19 designated offices, and, in the case of Claims for which the Department has no proof
20 of filing, shall further mean that delivery as discussed above is verifiable through
certified mail receipt or signature of receipt by an authorized employee of the
Department.
- 21 5. "Claimant(s)" shall mean any Arizona taxpayer who filed any Claim with the
22 Department at any time up to and including the present day, or who files any Claim
with the Department in the future.
- 23 6. "Late Filed Claim(s)" shall mean any Claim filed with the Department of Revenue on
24 or after July 9, 1998 seeking a refund of taxes paid on federal employee retirement
25 contributions in any tax year.
- 26 7. "Tax Court" shall mean the Tax Department of the Superior Court in Maricopa
27 County, State of Arizona.
28

- 1 8. "ITR 98-1" shall mean the Arizona Individual Income Tax ruling issued by the
Department concerning the relief to be provided to Claimants for years prior to 1991.
- 2 9. "Litigation" shall mean Case Nos. TX97-00119, TX97-00131, TX97-00150
3 (Consolidated) and the "1998 Judgment" shall mean the final judgment signed on
4 June 17, 1998 and entered in the Litigation.
- 5 10. "Plaintiffs' Counsel" shall mean Randall D. Wilkins, Paul V. Bonn, Brian J.
Campbell, D. Michael Hall, the law firm of Bonn & Wilkins, Chartered, formerly
6 known as Bonn, Luscher, Padden & Wilkins, Chartered, Eugene O. Duffy, William
7 A. Wiseman and the law firm of O'Neil, Cannon, Hollman, DeJong S.C., formerly
known as O'Neil, Cannon & Hollman, S.C.
- 8 11. "Paid Claim(s)" shall mean Claims previously paid for specific tax years during the
9 course of the Litigation by the Department.
- 10 12. "Original Plaintiffs" shall mean the plaintiffs in case no. TX97-000119 (consolidated
11 case) filed in the Tax Court by Clark J. Kerr and Billie Sue Kerr (collectively
12 "KERRS"), Susan Moran ("MORAN"), Steve Allen ("ALLEN"), and John Udall
("UDALL"). "Plaintiffs" shall mean MORAN and UDALL.

13 RECITALS

- 14 A. The KERRS filed a Claim with the Department for a refund of Arizona taxes paid on
15 federal retirement system contributions in tax year 1984 and subsequent years.
16 MORAN, ALLEN, and UDALL, each filed a Claim with the Department for a refund
of taxes paid on federal retirement system contributions during 1985 and subsequent
17 years.
- 18 B. The KERRS and ALLEN have received all refunds to which they are entitled in
19 connection with Arizona taxes paid on mandatory federal retirement contributions.
20 MORAN and UDALL claim that their respective Claims are representative of a class
21 comprised of federal employees who paid Arizona income taxes on mandatory
federal retirement contributions during one or more of the years 1985 through the
present and who did not receive a refund for those taxes.
- 22 C. The Department denied the Original Plaintiffs' applications for refunds and they filed
an appeal with the Department of Revenue.
- 23 D. The Original Plaintiffs were ultimately denied refunds through the administrative
24 process, and the Original Plaintiffs appealed by filing a Complaint with the Tax
25 Court, in the Superior Court of the State of Arizona, Maricopa County, consolidated
case no. TX97-000119.
- 26 E. During the course of the Litigation, in 1997, the Department made a determination
27 that it would pay certain Claims, and in fact conducted an evaluation of Claims filed
and paid approximately \$10,740,000 in refunds by the end of June, 1998, and
28

1 \$2,955,033.66 in fees to Plaintiff's Counsel pursuant to the 1998 Judgment by March,
2 2001. The Plaintiffs contend that the Claims paid and refunds issued are inadequate
3 and do not satisfy all valid and timely Claims. The Plaintiffs have also filed a Motion
4 to Enforce Judgment seeking to enforce the 1998 Judgment.

5 F. As evidenced in the following provisions, the parties have reached an agreement, if
6 finally approved by the Tax Court, making further proceedings in the Litigation
7 unnecessary, and allowing the Department to obtain from the Plaintiffs a dismissal of
8 Claims in the Litigation that are not entitled to further eligibility review under the
9 terms of this Settlement and a formal declaration that the 1998 Judgment has been
10 fully satisfied.

11 AGREEMENT

12 1. INCORPORATION OF RECITALS. The preceding recitals are hereby incorporated
13 in this Settlement.

14 2. WITHDRAWAL OF MOTION. Upon entry by the Tax Court of a final judgment
15 approving the Settlement, it is agreed that Plaintiffs shall withdraw the Motion to
16 Enforce Judgment.

17 3. DISMISSAL OF CLAIMS. Upon entry by the Tax Court of a final judgment
18 approving the Settlement, the parties shall execute a Stipulation of Dismissal with
19 Prejudice in a form substantially similar to that attached at Exhibit "A" hereto.
20 Except as otherwise provided in paragraphs 7 and 16 of this Settlement, the effect of
21 said stipulation shall be to dismiss with prejudice all claims and causes of action,
22 including all purported or putative class or representative claims, pending in the
23 Litigation, with all parties to bear its or their own attorneys' fees and costs in
24 connection with any dismissed claims or causes of action; provided, however, that
25 with respect to any individual Claims subject to evaluation for refund eligibility under
26 the terms of this Settlement, the foregoing dismissal shall become effective only upon
27 full performance by the Department of its obligations under the terms of this
28 Settlement with respect to such individual Claims and such dismissal shall not
preclude or limit the rights of the Claimants who filed such claims to any
administrative appeal, or any post-administrative appeal review, of any decision of
the Department under the terms of this Settlement and the Arizona law governing the
appeal rights of taxpayers whose refund claims are denied by the Department.
Moreover, except as otherwise provided in paragraphs 7 and 16 of this Settlement, the
parties intend that approval of this Settlement by the Tax Court constitutes and shall
immediately effect a release and waiver by the Original Plaintiffs, the Plaintiffs, all
Claimants, and all members of the putative class asserted by the Original Plaintiffs of
any and all claims, causes of action, damages, injuries, refund claims, administrative
claims, appeals, rights of set-off or offset, interest claims, and claims to attorneys'
fees or costs in connection with payment of any taxes to the State of Arizona on
income constituting mandatory contributions to a federal retirement program at any
time prior to entry of this Settlement against the State of Arizona, the Arizona
Department of Revenue, and all their respective officers, elected officials, agents,

1 employees, representatives and attorneys; provided, however, that with respect to any
2 individual Claims subject to evaluation for refund eligibility under the terms of this
3 Settlement, the foregoing release and waivers shall become effective only upon full
4 performance by the Department of its obligations under the terms of this Settlement
5 and such release and waiver is further subject to the rights of the Claimants who filed
6 such Claims to appeal of any decision of the Department under the terms of this
7 Settlement and the Arizona law governing such appeal rights.

- 8 4. CLAIMS TO BE REVIEWED. As part of its Settlement obligations, the Department
9 agrees to evaluate for further refund eligibility any Claim that was filed prior to
10 July 9, 1998 and that was either not previously evaluated for eligibility by the
11 Department, or that was previously denied as being "untimely" or for reasons that
12 were not otherwise specified in the denial paperwork, except that the Department
13 shall not evaluate further any Claims that the Department previously denied for the
14 following reasons: 1) because the Department determined that no sufficient evidence
15 existed that the Claimant had made any federal retirement pension contributions
16 during the relevant tax year(s) (including those Claimants for whom the Department
17 had determined no sufficient evidence existed that they were employed by the federal
18 government during the relevant tax year(s)); or 2) because the Department determined
19 no sufficient evidence existed that the Claimant filed an Arizona tax return for the tax
20 year for which the Claimant seeks a refund, or 3) because the Department determined
21 that the Claimant had no Arizona tax liability or paid no Arizona income taxes in the
22 tax year(s) for which the Claimant made his or her Claim(s). All Claims falling
23 within the foregoing three (3) categories are referred to hereafter as the "Denied
24 Claims." The Department shall not evaluate further any Paid Claim on which any
25 refund payment has been made previously by the Department. All such Paid Claims
26 shall be considered by all parties to have been paid in full. The Department and the
27 Plaintiffs agree that the Department may identify other categories of Claims that
28 should not be further evaluated for eligibility, and that the Department may, upon
consultation with and agreement by the Plaintiffs, treat such Claims as Denied Claims
are treated hereunder; provided, however, such agreement must be reached before the
notice of hearing to approve the Settlement is mailed and published.

19 With respect to those previously Denied Claims for which there has been filed a prior
20 administrative appeal, the parties stipulate that the 1998 Judgment is amended to the
21 extent necessary in order to allow the Department to continue to process those
22 appeals pursuant to the existing administrative appeals procedures of the Department
and the final judgment approving the Settlement shall so reflect.

23 In deciding which tax years each Claim's eligibility for refund or credit will be
24 evaluated for, the Department will evaluate any Claim eligible for review that was
25 filed using the protective claim form issued by the Department with the 1990 Arizona
26 income tax forms (the "1990 Claim Form") for eligibility in tax years 1985 through
27 1990, except to the extent the Claim already qualifies as a Denied Claim or Paid
28 Claim for any of those tax years. The Department will evaluate all other Claims
eligible for review that did not use the 1990 Claim Form for eligibility only for any of
the tax years 1985 through 1990 expressly identified by the Claimant on their Claim

1 filing. Thus, for example, a protective claim form filed in 1995 checking boxes for
2 1990, 1992 and 1993 will only be evaluated for eligibility in 1990; provided,
3 however, that evaluated Claims that expressly indicate a claim for 1990, or that
4 designate no particular tax year will be first evaluated for eligibility in tax year 1990.
5 If such a Claim is determined to be eligible for refund or credit in 1990, including a
6 Paid Claim for 1990, the Department shall then evaluate the Claim for eligibility in
7 1989, and, so long as the evaluations of such Claims continue to show eligibility for
8 refund or credit in the year under review, the Department shall review the Claim for
9 eligibility in the preceding year stopping after any review necessitated by these terms
10 for eligibility in tax year 1985. At the point at which the evaluation determines that
11 such a Claim is not eligible for refund or credit in a given year, the Department shall
12 not evaluate the Claim for eligibility in any preceding year. At no point shall any
13 Paid Claim be evaluated for further refund or credit eligibility. Also, Claims that
14 specifically designate only years after 1990 will not be reviewed for eligibility, but
15 will be denied as failing to file an eligible Claim. For instance, if a Claimant filed a
16 1995 claim form marking 1992, 1993 and 1994 as the relevant claim years, the
17 Department will not review the Claim for eligibility.

11 5. TREATMENT OF LATE CLAIMS, PAID CLAIMS AND DENIED CLAIMS AND
12 RELEASE OF JUDGMENT.

13 The Plaintiffs agree that the Settlement with the Department constitutes a full release
14 of the Department solely as to the operation and effect of the 1998 Judgment with
15 respect to any of the Denied Claims, and any Claims filed on or after July 9, 1998
16 (the "Late Claims"), and that it further constitutes a satisfaction of the 1998 Judgment
17 as to the Department with respect to any Paid Claims. The Department shall be
18 entitled immediately upon entry of a final judgment approving the Settlement
19 between the parties to take any actions that may or do prejudice the rights of the
20 Claimants in connection with any Denied Claims, Paid Claims or Late Claims,
21 including, but not limited to, issuance to Claimants of any notice of denial or other
22 determinations requiring the Claimants to respond with a timely administrative appeal
23 in order to preserve any portion of their Claim(s). The Plaintiffs agree that the
24 Settlement constitutes a full release of the Department as to the operation and effect
25 of the 1998 Judgment in accordance with the terms of this paragraph, and shall
26 request that the Tax Court issue an amended judgment reflecting these terms and
27 specifically releasing the Department from the terms of any prior injunctive order
28 concerning the Denied Claims, Paid Claims or any Late Claims, and releasing the
Department from any prior injunctive order to the extent otherwise necessary to
implement the terms of the parties' Settlement.

24 6. NOTICE TO CLAIMANTS.

25 The parties will execute and file a Stipulation of Plan of Notice in the form attached
26 hereto as Exhibit B. Upon preliminary approval of this Settlement by the Tax Court,
27 and prior to evaluating Claims for further eligibility, the Department will send a
28 notice as set forth in Exhibit B-1 attached hereto to those persons who have filed

1 Claims. The notice: 1) shall be approved in advance as to form by the Tax Court as
2 part of the Settlement of this matter; 2) shall explain the terms of the Settlement
3 between the Plaintiffs and the Department; 3) shall identify categorically the types of
4 previously unpaid Claims that will be evaluated for eligibility for a refund; 4) shall
5 identify generally the procedure the Department will apply to determine if a Claim is
6 eligible for a refund; 5) shall explain that upon completion of the evaluation of all of
7 the remaining Claims, refunds or credits shall be provided on any timely and eligible
8 Claims; and 6) shall provide notice of the settling parties' acknowledgement that the
9 payment of any further refunds or credits shall be treated as payment from a common
10 fund for purposes of the Settlement. The notice shall provide a date and time for a
11 hearing before the Tax Court for final approval of the Settlement, and shall provide a
12 deadline by which any Claimants wishing to object to the Settlement between the
13 Plaintiffs and the Department must file their written objection. Notice as set forth in
14 Exhibit B-2 attached hereto shall also be provided by Publication in the Federal
15 Times.

16 The Department shall within a reasonable time after the entry of a final judgment
17 approving the Settlement between the parties, commence providing written notice via
18 United States mail to all Claimants who filed Denied Claims or Late Claims and to all
19 Claimants who filed Paid Claims. Such notice shall indicate that the Department has
20 either denied or paid the Claimants' Claims, that the injunction against further action
21 by the Department to the prejudice of the rights of Claimants has been lifted, and that
22 to the extent any time remained on the Claimants' administrative or judicial appeal
23 rights, the time for filing any appropriate administrative or judicial action is running.
24 The foregoing forms of notice shall commence the running of all applicable deadlines
25 or periods of limitation for the filing of any administrative appeal, claim or any other
26 legal proceeding related to enforcement of said Denied Claims, Late Claims and Paid
27 Claims, and shall continue the running of any such applicable deadlines or periods of
28 limitation for such Claims that have been tolled, enjoined or otherwise interrupted in
connection with the Litigation.

19 7. ACKNOWLEDGEMENT OF TREATMENT OF SETTLEMENT AS COMMON
20 FUND SETTLEMENT. In the Litigation, the principle was reaffirmed that a common
21 fund case arises where a successful suit, brought by representative plaintiff(s), results
22 in the creation of a monetary fund that benefits a limited and identifiable group
23 similarly situated to the representative plaintiff(s). The 1998 Judgment determined
24 that this is a common fund case and the payments made under the program
25 implemented pursuant to ITR 98-1 constituted a common fund for purposes of this
26 Litigation. The Settlement represents a compromise of disputed claims to enforce the
27 1998 Judgment. The parties agree that the Department's issuance of any refunds or
28 credits in response to any Claims shall be considered payment from a common fund
for payment of meritorious and verifiable Claims, and that such fund consists of the
amount of any refunds, including interest, that are actually paid or credited to any
Claimant in connection with any Claims under the terms of this Settlement. The
Plaintiffs and Department further agree that none of the Denied Claims, Paid Claims
or the Late Claims are eligible for any participation in any common fund payments.

1 8. PROCESS BY WHICH CLAIMS ARE REVIEWED. The Department has indicated
2 to the Plaintiffs the general form of the procedures it intends to use for evaluating
3 Claims eligible for further evaluation under the foregoing terms. These procedures
4 are, to the extent practical, the same procedures used in processing Paid Claims under
5 the program implemented pursuant to ITR 98-1 to the extent data sources and data
6 used in the prior evaluation program are still available. The Plaintiffs acknowledge
7 that the Department reserves discretion to depart from the established procedure
8 where necessary due to lack of sufficient information, lack of Claimant cooperation,
9 or other factors making such departures reasonably necessary. The Plaintiffs and the
10 Department expressly acknowledge the Department's right to issue a notice of denial
11 immediately upon determining that any Claim is ineligible for a refund or credit, and
12 that such notice commences immediately the running of any limitations period and
13 invokes any requirements under existing law for the filing by the Claimants of any
14 administrative appeal or other legal proceeding.

15 9. CRITERIA FOR DETERMINING ELIGIBILITY FOR REFUND. The Plaintiffs and
16 the Department agree that no Claim shall be eligible for refund if the Claimant
17 asserting such Claim had no Arizona income tax liability for the tax year to which the
18 Claim pertains, nor shall any Claim be eligible for refund if the net Arizona tax
19 payments made by such Claimant for the tax year in question, considering any prior
20 refunds made for such tax year for any reason, are \$0.00, or less. The Plaintiffs and
21 the Department further agree that the only Claims that shall be entitled to further
22 refunds or credits are those for which the preponderance of the data reasonably
23 available to the Department shows they meet the following terms: 1) are eligible for
24 evaluation under the terms set forth above; 2) are made by a Claimant who filed an
25 Arizona income tax return in the year to which the Claim relates and whose net
26 payment of Arizona income tax for such year, considering all prior refunds for such
27 tax year, is greater than \$0.00; 3) are supported by sufficient proof from the Claimant
28 or the records reasonably available to the Department that the Claimant was a federal
employee in the tax year to which the Claim relates, made contributions to a federal
retirement system in that tax year, and paid Arizona income tax on such contributions
for that tax year. The Plaintiffs and the Department agree as part of the Settlement
that the sources of data that the Department shall access to determine eligibility under
the foregoing criteria (the "Data Sources") shall be substantially similar to the data
sources used to evaluate claims under the program implemented pursuant to ITR 98-1
to the extent such data sources remain available to the Department, and in the form(s)
such data sources have been supplemented or restored since the release of ITR 98-1.

As part of its evaluation of refund eligibility, the Department will first look at all Data
Sources and other data in its possession relevant to the claims under review. If such
data in the Department's possession cannot be readily accessed in its current
condition, and the Department concludes it is not feasible for the Department to
access or restore such data, the Department will alert Plaintiffs' Counsel within a
reasonable time concerning the categories of data that are not feasible to access or
restore. If the parties are unable to agree upon an acceptable and reasonable solution,
the matter will be referred to Bruce E. Meyerson, Esq., for mediation and resolution.

1 Mr. Meyerson's decision on the matter will be final and non-appealable. If the data
2 needed to evaluate a refund Claim is not in the Department's possession, the
3 Department shall attempt to contact the Claimant in writing and request the Claimant
4 to provide the necessary data to the Department.

5 10. DETERMINING THE AMOUNTS OF REFUNDS. The amount of each refund or
6 credit shall be calculated in accordance with Arizona law and based on the
7 information available to the Department from its current records, from the Data
8 Sources, or from the Claimants in response to the Department's requests for
9 submission within specified time periods. The Plaintiffs and the Department agree
10 that the formulas to be applied to determine the amount of a refund for any Claim that
11 has otherwise been determined to be eligible for a refund, but for which insufficient
12 data exists to determine the amount of federal retirement contributions on which
13 Arizona income tax was paid by the Claimant in the relevant year shall be the same
14 formulas used in the program that was implemented pursuant to ITR 98-1 for tax
15 years 1986 through 1990. For tax year 1985, the Department shall use the formula
16 used for tax year 1986 or such other formula which approximates the contributions in
17 said tax year. The parties agree that the amount of any refund for a tax year made
18 pursuant to this Settlement shall not exceed the net taxes paid by the relevant
19 taxpayer(s) for that tax year considering any prior refunds paid to such taxpayer(s).
20 The parties agree that the total amount of refunds that may be paid under the terms of
21 this Settlement has not yet been determined.

22 11. TIMING OF ISSUANCE OF REFUNDS/CREDITS. The Department reserves the
23 right to make no payments and issue no credits in connection with its evaluation of
24 Claims until it has completed the evaluation of all Claims required by this Settlement.
25 The Department shall reserve the right to provide notice to any Claimant of the
26 amount(s) of any refunds or credits the Department has calculated in connection with
27 such Claimant's Claim in advance of completing the evaluation of all Claims, along
28 with the rate of any accruing interest.

29 Within and in accordance with any confidentiality requirements imposed by law, the
30 Department shall inform Plaintiffs' Counsel of how it intends to treat refunds or
31 credits on any Claims that constitute the community property of Claimants who are
32 now divorced, on how to treat refunds and credits to which an estate or heirs of a
33 deceased Claimant may have claims, and on how the Department shall handle refunds
34 or credits where the Department is no longer able to locate the Claimant. The
35 Plaintiffs acknowledge that the determination of the appropriate treatment of potential
36 community or former community Claims or of Claims by a deceased Claimants' heirs
37 or estate is in the discretion of the Department under Arizona law.

38 12. APPLICATION OF OFFSETS AND TAXES OWED OBLIGATIONS. The
39 Plaintiffs acknowledge that all refunds or credits under the Settlement are subject to
40 offsets authorized or required by Arizona law, including without limitation offsets by
41 the Department for taxes owed by Claimants pursuant to A.R.S. § 42-1118 and other

offsets pursuant to A.R.S. § 42-1122. The amount subject to offset shall be determined after the deduction of attorneys' fees.

13. FILING OF SATISFACTION OF JUDGMENT. The Plaintiffs agree that upon completion by the Department of its evaluation of Claims under the terms expressed here, and issuance by the Department of any further refunds or credits that such evaluation determines any Claimants are eligible for, and payment of any attorneys' fees awarded by the Tax Court to Plaintiffs' Counsel, Plaintiffs shall immediately complete and file a form of satisfaction of judgment reflecting that the terms of any final judgment entered pursuant to this Settlement and the remaining terms of the 1998 Judgment, as modified pursuant to the Settlement, have been satisfied in full and that all Claims have been satisfied and paid in full.

14. COSTS INCURRED DURING THE REVIEW OF ALL RELEVANT CLAIMS. The Department shall bear the cost of administering the Settlement, including the costs of the Plan of Notice and the costs of reviewing all Claims which have been deemed eligible for review under the foregoing terms; provided, however, that the Settlement is contingent upon the Department obtaining sufficient additional appropriations from the Arizona Legislature to allow the Department to implement the evaluation process agreed upon without using the Department's normal operating funds.

15. ACCOUNTING OF CLAIMS REVIEWED AND REFUNDS DISTRIBUTED. The Department shall provide Plaintiffs' Counsel on a quarterly basis an Accounting concerning the Claims evaluated by the Department and the results of such evaluations, including the aggregate number of Claims reviewed and the aggregate amount of refunds or credits calculated in the reporting period. The Accounting will be transmitted to Plaintiffs' Counsel electronically in a CSV or Microsoft Excel format. Details regarding the identity of any Claimant shall remain strictly confidential in accordance with A.R.S. § 42-2003 and all applicable federal law, including confidentiality requirements of the Internal Revenue Service, and will not be disclosed to Plaintiffs or Plaintiffs' Counsel, and any other matter that is required to remain confidential pursuant to state or federal law shall not be disclosed to Plaintiffs or Plaintiffs' Counsel. If any Claims are deemed by the Department as ineligible for refund, the specific reason for the denial shall be included without identifying the specific Claimant or any other information required to be maintained as confidential pursuant to applicable law.

Upon the request of any particular Claimant, confidential information may be disclosed to that Claimant or his attorney(s), by submitting a current and valid written authorization on a form pre-approved by the Department for such purposes.

16. ATTORNEYS' FEES. Upon execution of the Settlement and submission to the Tax Court of the form of notice discussed in paragraph 6 above, Plaintiffs' Counsel are entitled to submit to the Tax Court an application for an award of attorneys' fees from any refunds or credits paid to Claimants under the terms of the Settlement. Plaintiffs'

1 Counsel agree that they will not seek an amount greater than 20% of any refund or
2 credit actually paid, which percentage is the percentage awarded by the Tax Court in
3 the 1998 Judgment, a copy of which is Exhibit C hereto. The parties hereby notify
4 the Tax Court that the Department does not intend to file any response to such
5 application unless requested by the Tax Court; provided, however, that this position
6 by the Department does not constitute any acknowledgement by the Department that
7 it is without standing or otherwise is or should be unauthorized to contest, object to,
8 or comment upon attorneys' fees applications in similar cases. It is further provided
9 this paragraph does not constitute any acknowledgement by Plaintiffs' Counsel that
10 the Department has standing or is otherwise authorized to contest, object to, or
11 comment upon the attorneys' fees applications filed by Plaintiffs' Counsel in the
12 Litigation. Plaintiffs' Counsel shall limit their application to a percentage of refunds
13 or credits actually issued to Claimants under the terms discussed herein. The
14 application for attorneys' fees shall request that the Department set aside any
15 percentage awarded by the Tax Court when the Department calculates and processes
16 any refunds or credits, and that Plaintiffs' Counsel be paid any fees awarded by the
17 Tax Court only after completion of the evaluation process and that the fees related to
18 a particular Claim be paid at the time of issuance of any refund(s) or credit(s) for that
19 Claim by the Department.

20 The Parties acknowledge that individual notice concerning the attorneys' fees
21 awarded in the 1998 Judgment has previously been provided pursuant to the Court's
22 order of March 3, 1998. While it is not possible now to produce a master certificate
23 of mailing, it is likely that the Department attempted to send a copy of the 1998
24 attorneys' fees hearing notice to all Claimants who had filed a Claim prior to the
25 mailing of the notice of the 1998 hearing. It is Plaintiffs' Counsel's position that all
26 Claimants who received the 1998 notice are bound by the fee award under the 1998
27 Judgment, which is final and controlling. In addition, as to those Claimants who
28 received Paid Claims for one or more tax years under ITR 98-1, it is Plaintiffs'
29 Counsel's position that the fee award under the 1998 Judgment is final and controlling
30 with respect to any additional refunds or credits issued under the Settlement.
31 Plaintiffs' Counsel have reserved all rights to proceed to enforce the 1998 Judgment
32 on this attorneys' fees issue and do not waive that reservation of rights by anything
33 contained in this paragraph or this Settlement.

34 17. NOTICE TO CLAIMANTS REGARDING ATTORNEYS' FEES APPLICATION.

35 As part of the Plan of Notice, all Claimants who have filed a Claim and whose Claim
36 is deemed eligible for review under the foregoing terms shall be provided with a
37 notice regarding Plaintiffs' Counsel's application for attorneys' fees and an
38 opportunity to be heard before the Tax Court concerning the application. The notice
39 shall identify a date, time and location for hearing on the application for attorneys'
40 fees and shall specify the contents of and the date by which an objection to the
41 application must be filed.

18. ADMINISTRATIVE APPEALS AND JUDICIAL ACTIONS. Any Claimant who has been or is hereafter denied a refund for any reason, or who desires to challenge the amount of the refund(s) he or she has been or is hereafter provided, shall be limited to pursuing relief from the Department's decision through the Department's established administrative appeal process, consistent with the procedures and law applicable thereto. It is agreed that nothing in the Settlement or the final judgment approving the Settlement shall toll or impair in any way any of the regulatory or statutory requirements, including any limitations periods, applicable to any Claims that have been or are hereafter paid by the Department or that have been or are hereafter denied by the Department, and that nothing in the Settlement or the final judgment approving the Settlement shall grant or confer any rights to review or appeal to any Claimant whose prior failure to timely seek review of or to appeal a Denied Claim or a Paid Claim has extinguished such rights.
19. FURTHER PROCEEDINGS. In the event the Settlement is not approved or the final judgment contemplated herein is not entered, the parties will be restored to their respective positions as of the date of this Settlement and the Settlement shall be of no force or effect and the agreements reflected herein will be without prejudice to the parties' rights to maintain their respective positions concerning the right of recovery or defenses thereto before the Tax Court or in any appeal taken therefrom.
20. SETTLEMENT REPORTING. The Department will report refund and interest payments paid under the Settlement on Form 1099G and Form 1099INT or such other form as required by the Internal Revenue Service. The Department agrees, consistent with published Internal Revenue Service guidance, to report only the net amount paid to a Claimant as taxable income, and the amount paid to Plaintiffs' Counsel as common fund attorneys' fees shall be reported for tax purposes by Plaintiffs' Counsel.
21. BEST EFFORTS. The parties and their counsel will use their best efforts to implement the Settlement.
22. GOVERNING LAW. The Settlement shall be governed by and construed in accordance with the laws and Constitution of the State of Arizona and the United States Constitution.
23. FINALITY. The parties to the Settlement intend it to be a final and complete resolution of all disputes asserted or which could have been asserted by the Original Plaintiffs and all Claimants against the Department with respect to the matters settled herein. In the event this Settlement is not finally approved, nothing contained herein shall be construed as a concession of any previously disputed issue in the Litigation.
24. CONTINUING TAX COURT SUPERVISION. Upon final approval of the Settlement, except as otherwise specified herein, it is agreed that the Tax Court shall retain jurisdiction over this matter until the parties have fully performed all of their obligations hereunder.

25. PREVIOUSLY IDENTIFIED CLAIMANTS. During the course of the Litigation, Plaintiffs' Counsel has identified from time to time to either the Department, its counsel, or the Tax Court a number of instances where Claimants did not receive refunds pursuant to the Department's prior refund process under ITR 98-1. It is agreed that each of these Claimants has again been identified by Plaintiffs' Counsel to the Department and the Department will review each of these Claimants' eligibility for refunds consistent with the criteria and procedures for review and determination applied to all other claims eligible for review under the terms of this Settlement. However, it is agreed that, given the dates upon which these Claimants were previously identified by Plaintiffs' Counsel, each of these Claimants shall be considered timely in the event that they are otherwise eligible for relief under the Settlement. This list of previously identified Claimants has been provided to the Department's counsel, William A. Richards, Esq, prior to the submission of the Settlement to the Tax Court for approval.

26. TIMING OF PAYMENT. It is estimated that the payment of refunds or credits contemplated by the Settlement will be made not later than one year after the Settlement is finally approved by the Tax Court. In the event that this date for payment cannot be achieved, the Department shall present to the Tax Court evidence that the Department is continuing to make its best efforts to complete performance of its obligations and that the delay in payment is justified by good cause.

27. TAX COURT APPROVAL. The parties shall submit this Settlement as soon as practicable to the Tax Court for preliminary and final approval.

Dated this 19th day of April, 2006.

BONN & WILKINS, CHARTERED

O'NEIL, CANNON, HOLLMAN, DEJONG S.C.

By: Randall D. Wilkins
Randall D. Wilkins, Esq.
Paul V. Bonn, Esq.
Brian J. Campbell, Esq.
D. Michael Hall, Esq.
Plaintiffs' Counsel

By: Eugene O. Duffy
Eugene O. Duffy, Esq.
William A. Wiseman, Esq.
Plaintiffs' Counsel

1 ARIZONA DEPARTMENT OF REVENUE

2
3 By: Gale L. Garriott
4 Gale L. Garriott, as Director

5 APPROVED AS TO FORM:

6 TERRY GODDARD
7 Arizona Attorney General

8 By: William A. Richards, Esq.
9 William A. Richards, Esq.
10 Assistant Attorney General
11 Senior Litigation Counsel
12 Civil Division
13 *Defendants' Counsel*
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1 Randall D. Wilkins, State Bar No. 009350
Paul V. Bonn, State Bar No. 001516
2 D. Michael Hall, State Bar No. 010267
Brian J. Campbell, State Bar No. 013177
3 BONN & WILKINS, CHARTERED
805 North Second Street
4 Phoenix, Arizona 85004
(602) 254-5557

5 Eugene O. Duffy
6 Wisconsin Bar No. 1015753
William A. Wiseman
7 Wisconsin Bar No. 1015696
O'NEIL, CANNON, HOLLMAN, DE JONG S.C.
8 Suite 1400, 111 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4803
9 (414) 276-5000

10 *Attorneys for Plaintiffs*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN THE ARIZONA TAX COURT**

13 SUSAN MORAN and JOHN UDALL,
14 individually and as representatives of the class
comprised of federal employees who paid
15 Arizona income taxes on federal retirement
contributions during one or more of the years
16 1985 to date,

17 **Plaintiffs,**

18 **v.**

19 GALE L. GARRIOTT, in his capacity as
Director of the Arizona Department of
20 Revenue, the ARIZONA DEPARTMENT OF
REVENUE of the State of Arizona,

21 **Defendants.**

22 SUSAN MORAN and JOHN UDALL AND
23 THEIR ATTORNEYS, BONN & WILKINS,
CHARTERED and O'NEIL, CANNON,
24 HOLLMAN, DE JONG, S.C.,

25 **Counterclaimants,**

26 **v.**

27 STATE OF ARIZONA, ex rel., the ARIZONA
DEPARTMENT OF REVENUE,

28 **Counterdefendants.**

No. TX 97-00119
No. TX 97-00131
No. TX 97-00150
(Consolidated)

**STIPULATION OF DISMISSAL WITH
PREJUDICE**

(Assigned to the Hon. Mark W. Armstrong)

1 IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto through
2 their undersigned counsel, and pursuant to the Stipulation of Settlement (the "Settlement")
3 filed herein, as follows:

4 1. The terms used herein shall have the same meaning as the terms contained in the
5 Settlement.

6 2. Except as provided below, upon entry by the Tax Court of a final judgment approving
7 the parties' Settlement, all claims and causes of action, including without limitation all
8 purported or putative class or representative claims, pending in this matter against the
9 Department shall be dismissed with prejudice with all parties to bear its or their own
10 attorneys' fees and costs in connection with any such dismissed claims or causes of
11 action. As set forth in paragraphs 7 and 16 of the Settlement, the dismissal does not
12 include Plaintiffs' Counsel's common fund attorneys' fee request.

13 3. With respect to any Claims that are subject to evaluation for refund eligibility under
14 the terms of the Settlement, the dismissal contemplated in paragraph 2 above shall
15 become effective against the Department only upon full performance by the
16 Department of its obligations under the terms of the Settlement with respect such
17 individual Claims, and the dismissal shall not preclude or limit the rights of Claimants
18 whose Claims are subject to evaluation for refund eligibility under the Settlement to
19 any administrative appeal or post-administrative appeal review of any decision of the
20 Department concerning their Claims under the terms of the Settlement and the Arizona
21 law governing appeal rights of taxpayers whose refund claims are denied by the
22 Department.

23 4. The parties have lodged an Order in the form attached hereto to implement the
24 foregoing Stipulation.

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1 Dated this ____ day of April, 2006.

2 BONN & WILKINS, CHARTERED

O'NEIL, CANNON, HOLLMAN, DEJONG S.C.

3
4 By: _____

5 Randall D. Wilkins, Esq.

6 Paul V. Bonn, Esq.

7 Brian J. Campbell, Esq.

8 D. Michael Hall, Esq.

9 *Plaintiffs' Counsel*

By: _____

Eugene O. Duffy, Esq.

William A. Wiseman, Esq.

Plaintiffs' Counsel

8 TERRY GODDARD

9 Arizona Attorney General

10

11 By: _____

12 William A. Richards, Esq.

13 Assistant Attorney General

14 Senior Litigation Counsel

15 Civil Division

16 *Defendants' Counsel*

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805 North Second Street
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O'NEIL, CANNON, HOLLMAN, DE JONG S.C.
8 Suite 1400, 111 East Wisconsin Avenue
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9 (414) 276-5000

10 *Attorneys for Plaintiffs*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN THE ARIZONA TAX COURT**

13 SUSAN MORAN and JOHN UDALL,
14 individually and as representatives of the class
comprised of federal employees who paid
15 Arizona income taxes on federal retirement
contributions during one or more of the years
16 1985 to date,

17 **Plaintiffs,**

18 **v.**

19 GALE L. GARRIOTT, in his capacity as
Director of the Arizona Department of
20 Revenue, the ARIZONA DEPARTMENT OF
REVENUE of the State of Arizona,

21 **Defendants.**

22 SUSAN MORAN and JOHN UDALL AND
23 THEIR ATTORNEYS, BONN & WILKINS,
CHARTERED and O'NEIL, CANNON,
24 HOLLMAN, DE JONG, S.C.,

25 **Counterclaimants,**

26 **v.**

27 STATE OF ARIZONA, ex rel., the ARIZONA
DEPARTMENT OF REVENUE,

28 **Counterdefendants.**

No. TX 97-00119
No. TX 97-00131
No. TX 97-00150
(Consolidated)

**ORDER
OF DISMISSAL WITH PREJUDICE**

(Assigned to the Hon. Mark W. Armstrong)

1 Having considered the Stipulation of Dismissal With Prejudice submitted by the parties hereto,
2 and good cause appearing therefor,
3 IT IS HEREBY ORDERED as follows: The terms used herein shall have the same meaning as
4 the terms contained in the Stipulation of Settlement (the "Settlement"). Except as provided
5 below, all claims and causes of action, including without limitation all purported or putative
6 class or representative claims, pending in this matter against the Department are hereby
7 dismissed with prejudice with all parties to bear its or their own attorneys' fees and costs in
8 connection with any such dismissed claims or causes of action. As set forth in paragraphs 7
9 and 16 of the Settlement, this dismissal does not include Plaintiffs' Counsel's common fund
10 attorneys' fee request.

11 IT IS FURTHER ORDERED, that with respect to any Claims that are subject to evaluation for
12 refund eligibility under the terms of the Settlement, the dismissal contemplated above shall
13 become effective against the Department only upon full performance by that Department of its
14 obligations under the terms of the Settlement with respect to such individual Claims, and the
15 dismissal shall not preclude or limit the rights of Claimants whose Claims are subject to
16 evaluation for refund eligibility under the Settlement to any administrative appeal or post-
17 administrative appeal review of any decision of the Department concerning their Claims under
18 the terms of the Settlement and the Arizona law governing appeal rights of taxpayers whose
19 refund claims are denied by the Department.

20 DATED this ____ day of _____, 2006.

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Honorable Mark W. Armstrong
Judge of the Superior Court

1 Randall D. Wilkins, State Bar No. 009350
Paul V. Bonn, State Bar No. 001516
2 D. Michael Hall, State Bar No. 010267
Brian J. Campbell, State Bar No. 013177
3 BONN & WILKINS, CHARTERED
805 North Second Street
4 Phoenix, Arizona 85004
(602) 254-5557

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8 Suite 1400, 111 East Wisconsin Avenue
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9 (414) 276-5000

10 *Attorneys for Plaintiffs*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN THE ARIZONA TAX COURT**

13 SUSAN MORAN and JOHN UDALL,
14 individually and as representatives of the class
15 comprised of federal employees who paid
16 Arizona income taxes on federal retirement
contributions during one or more of the years
1985 to date,

17 Plaintiffs,

18 v.

19 GALE L. GARRIOTT, in his capacity as
20 Director of the Arizona Department of
Revenue, the ARIZONA DEPARTMENT OF
REVENUE of the State of Arizona,

21 Defendants.

22 SUSAN MORAN and JOHN UDALL AND
23 THEIR ATTORNEYS, BONN & WILKINS,
24 CHARTERED and O'NEIL, CANNON,
HOLLMAN, DE JONG, S.C.,

25 Counterclaimants,

26 v.

27 STATE OF ARIZONA, ex rel., the ARIZONA
DEPARTMENT OF REVENUE,

28 Counterdefendants.

No. TX 97-00119
No. TX 97-00131
No. TX 97-00150
(Consolidated)

**STIPULATION
OF
PLAN OF NOTICE**

(Assigned to the Hon. Mark W. Armstrong)

1 IT IS HEREBY STIPULATED AND AGREED, by and between the
2 parties hereto, through the undersigned, their respective counsel, subject to the approval
3 of the Tax Court, as follows:

4 1. All terms used herein shall have the same meaning as the terms
5 set forth in the Stipulation of Settlement.

6 2. The parties will present the Tax Court with this Plan of Notice
7 and with the (2) forms of notice, one form for mailing (attached as Exhibit B-1 hereto)
8 and the other for publication (attached as Exhibit B-2 hereto) to inform Claimants of the
9 proposed Settlement, the Settlement hearing and their rights with respect thereto.

10 3. The Department will mail a copy of Exhibit B-1, by first class
11 mail to all Claimants who have been identified from the Department's records. The
12 Department will complete the mailing on or before May __, 2006.

13 4. The Department shall also be responsible for publishing a copy
14 of Exhibit B-2, once a week for three (3) consecutive weeks in the Federal Times as a
15 legal notice therein. Such publication shall be completed by May __, 2006.

16 5. The Department shall file proof with the Tax Court prior to the
17 date for the final hearing concerning the approval of the Settlement that the foregoing
18 notice was provided.

19 6. Within a reasonable time following the entry of a final judgment
20 approving the Settlement, the Department will provide written notice by first class mail
21 that no further refunds will be made to Claimants on any Denied Claims, Paid Claims or
22 Late Claims.

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RESPECTFULLY SUBMITTED this ____ day of April, 2006.

BONN & WILKINS, CHARTERED S.C.

O'NEIL, CANNON, HOLLMAN, DEJONG S.C.

By: _____
Randall D. Wilkins, Esq.
Paul V. Bonn, Esq.
Brian J. Campbell, Esq.
D. Michael Hall, Esq.
Plaintiffs' Counsel

By: _____
Eugene O. Duffy, Esq.
William A. Wiseman, Esq.
Plaintiffs' Counsel

TERRY GODDARD
Arizona Attorney General

By: _____
William A. Richards, Esq.
Assistant Attorney General
Senior Litigation Counsel
Civil Division
Defendants' Counsel

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

SUSAN MORAN and JOHN UDALL,

Plaintiffs,

vs.

GALE L. GARRIOTT, in his capacity as
Director of the Arizona Department of Revenue,
the ARIZONA DEPARTMENT OF REVENUE
of the State of Arizona,

Defendants.

No. TX 97-00119

No. TX 97-00131

No. TX 97-00150

(Consolidated)

NOTICE OF SETTLEMENT AND
SETTLEMENT HEARINGS

(Assigned to the Honorable
Mark W. Armstrong)

PLEASE READ THIS NOTICE CAREFULLY

THIS NOTICE RELATES TO PENDING LITIGATION AND A PROPOSED
SETTLEMENT OF THIS LITIGATION AND CONTAINS IMPORTANT INFORMATION
AS TO RIGHTS YOU MAY HAVE TO RECEIVE TAX REFUNDS.

YOUR RECEIPT OF THIS NOTICE DOES NOT INDICATE THAT YOU ARE ELIGIBLE
FOR A REFUND OR THAT ANY CLAIM FILED BY YOU FOR A REFUND SHALL BE
REVIEWED PURSUANT TO THE PROPOSED SETTLEMENT DISCUSSED IN THIS
NOTICE.

ALL DECISIONS ON WHETHER ANY REFUND CLAIM YOU FILED WILL BE
REVIEWED FURTHER OR WHETHER YOU WILL BE CONSIDERED ELIGIBLE FOR
ANY REFUND WILL BE COMMUNICATED TO YOU ONLY IF AND AFTER THE
PROPOSED SETTLEMENT DISCUSSED IN THIS NOTICE RECEIVES FINAL
APPROVAL FROM THE COURT BEFORE WHICH THIS CASE IS PENDING.

NOTICE IS HEREBY GIVEN THAT A PROPOSED SETTLEMENT ("Settlement") HAS
BEEN reached in the above-captioned Litigation ("Litigation"). The above named plaintiffs
("Plaintiffs") filed suit to recover the Arizona income taxes paid by federal employees on mandatory
contributions to federal retirement programs ("Claimants"). It has been determined that the former
Arizona tax law discriminated against certain of those federal employees in violation of 4 U.S.C. §
111. The Litigation is back before the Tax Court upon remand from the Supreme Court of Arizona

EXHIBIT B-1

1 to address the Plaintiffs' Claims that additional refunds are due Claimants for one or more of the
2 years 1985 to and including 1990. It has been finally determined that the Arizona Tax Law for years
3 after 1990 does not unlawfully discriminate against federal employees. This notice is not an
4 expression of any opinion by the Court as to the merits of any of the claims or defenses asserted by
any party in this Litigation. The purpose of this notice is to inform you of the Court's order granting
preliminary approval of the proposed Settlement, and to notify you of certain rights you may have.

5 1. **Terms of Proposed Settlement.** Subject to Tax Court approval and other conditions, the
6 Plaintiffs and the Arizona Department of Revenue ("Department") have agreed on a Settlement under
7 which the Department will evaluate certain individual refund claims ("Claim(s)") filed with the
8 Department before July 9, 1998 for eligibility for further refunds. The refund payments will be in
9 final settlement of all Claims by Claimants against the Department for the years 1985 to 1990. The
proposed Settlement is a compromise of disputed claims and does not represent an admission of
liability or responsibility on the part of the Department to pay refunds.

10 A. **Eligibility for Refunds.** In 1998, the Department issued Individual Income Tax
11 Ruling 98-1 ("ITR 98-1"). Under this ruling, the Department paid refunds of certain individual refund
12 Claims. As part of its Settlement obligations, and except as stated below, the Department agrees to
13 evaluate for further refund eligibility any individual refund Claim that was filed prior to July 9, 1998
14 and that was either not previously evaluated for eligibility by the Department, or that was previously
15 denied as being "untimely" or for reasons that were not otherwise specified in the denial paperwork.
16 However, the Department shall not evaluate further any Claims that the Department previously
17 denied for the following reasons: 1) because the Department determined that no sufficient evidence
18 existed that the Claimant had made any federal retirement pension contributions during the relevant
19 tax year(s) (including those Claimants for whom the Department had determined no sufficient
20 evidence existed that they were employed by the federal government during the relevant tax year(s));
21 2) because the Department determined no sufficient evidence existed that the Claimant filed an
Arizona tax return for the tax year for which the Claimant seeks a refund; or 3) because the
Department determined that the Claimant had no Arizona tax liability or paid no Arizona income
taxes in the tax year(s) for which the Claimant made his or her Claim(s). All Claims falling within
the foregoing three (3) categories are referred to hereafter as the "Denied Claims." The Department
shall also not evaluate further any Claims for any years on which any refund payment has been made
previously by the Department (the "Paid Claims"), and all such Claims shall be considered by all
parties to have been paid in full for the years paid.

22 In deciding which tax years each Claim's eligibility for refund or credit will be evaluated for,
23 the Department will evaluate any Claim eligible for review that was filed using the protective claim
24 form issued by the Department with the 1990 Arizona income tax form (the "1990 Claim Form") for
25 eligibility in tax years 1985 through 1990, except to the extent the Claim already qualifies as a
26 Denied Claim or Paid Claim for any of those tax years. The Department will evaluate all Claims
eligible for review that were not filed on the 1990 Claim Form for eligibility only for any of the tax
years 1985 through 1990 expressly identified by the Claimant on his/her Claim filing. Thus, for

EXHIBIT B-1

1 example, a protective claim form filed in 1995 checking boxes for 1990, 1992 and 1993 will only be
2 evaluated for eligibility in 1990. However, evaluated Claims that expressly indicate a Claim for
3 1990, or that designate no particular tax year will be first evaluated for eligibility in tax year 1990.
4 If such a Claim is determined to be eligible for refund or credit in 1990, including a Paid Claim for
5 1990, the Department shall then evaluate the Claim for eligibility in 1989, and, so long as the
6 evaluations of such Claims continue to show eligibility for refund or credit in the year under review,
7 the Department shall review the Claim for eligibility in the preceding year stopping after any review
8 necessitated by these terms for eligibility in tax year 1985. At the point at which the evaluation
9 determines that such a Claim is not eligible for refund or credit in a given year, the Department shall
10 not evaluate the Claim for eligibility in any preceding year. At no point shall any Paid Claim be
11 evaluated for further refund or credit eligibility. Also, Claims that specifically designate only years
12 after 1990 will not be reviewed for eligibility, but will be denied as failing to file an eligible claim.
13 For instance, if a Claimant filed a 1995 claim form marking 1992, 1993 and 1994 as the relevant
14 claim years, the Department will not review the Claim for eligibility.

15 In determining eligibility the Department shall first attempt to access substantially the same
16 types of data sources used to review claims under the program implemented pursuant to ITR 98-1.
17 The Department intends to utilize such data to the extent such data is still available to the
18 Department, and in the forms, if any, that such data has been supplemented or restored since the
19 release of ITR 98-1. In determining eligibility, the Department will attempt to review all data in its
20 possession which is feasible and relevant to the eligibility review. To the extent, if any, that the
21 Department does not have the necessary data in its possession, the Department will request the data
22 from the Claimant.

23 **B. Refund Calculation.** In calculating refunds, the Department shall follow a process
24 similar to that used in determining the initial refunds paid in the Litigation during 1998 under the
25 program implemented pursuant to ITR 98-1.

26 **C. Additional Information.** In the case of some Claimants, the Department may need
27 additional information to determine whether a refund is due and the amount of any refund. There is
28 no requirement for a Claimant to file anything at this time. In the event additional information is
required to determine your entitlement or the amount of the refund due you, you will be notified in
writing by the Department. However, to minimize the possibility of subsequent delay, Claimants are
encouraged to take steps to preserve whatever tax records they may have for tax years 1985 to and
including 1990, including, but not limited to, Arizona tax returns, federal tax returns, W-2's, and any
related documents, statements or other records concerning mandatory contributions to federal
retirement programs.

D. Pending Appeals and Deadlines for Appeal. Pursuant to the terms of the June 17,
1998 Judgment ("1998 Judgment") previously filed and entered in this Litigation, administrative
action by the Department on appeals of previously Denied Claims has been stayed. Upon entry of a
final judgment approving this Settlement, the stay on these pending administrative appeals and of

EXHIBIT B-1

1 any unexpired deadlines for appeals of previously Denied Claims will be lifted and the Department
2 will continue to process appeals of Denied Claims pursuant to the existing administrative appeals
3 procedures of the Department.

4 E. Claims Not Eligible for Further Review. Within a reasonable time after entry of a
5 final judgment approving the Settlement, the Department shall notify Claimants whose Claims are
6 not eligible for further review (for example, Claims filed on or after July 9, 1998). Appeals of the
7 Department's determinations must be made in accordance with the existing administrative appeals
8 procedures of the Department.

9 F. Calculation Notice. The Department has reserved the right to inform each Claimant
10 by written notice of its refund calculation prior to issuing the refunds. The notice will also set forth
11 the administrative appeals procedure for Claimants to object to any refund notice.

12 G. Other Debts. If a Claimant is indebted to the State of Arizona or the United States, a
13 refund under the Settlement will be offset against such debts to the extent authorized by law.

14 H. Costs of Settlement Administration. The Department shall bear all costs of
15 administering the Settlement; provided, however, that the Settlement is contingent upon the
16 Department obtaining sufficient additional appropriations from the Arizona Legislature to allow the
17 Department to implement the evaluation process agreed upon without using the Department's normal
18 operating funds.

19 I. Payment of Refunds/Credits. It is estimated that the determination and the payment
20 of refunds or credits will be completed by approximately one year from the date of final Tax Court
21 approval of the proposed Settlement. In the event payment is delayed, the Department shall establish
22 to the satisfaction of the Tax Court that the delay in payment is justified by good cause.

23 J. Administrative Appeals. All appeals of any determination of the Department under
24 the Settlement shall be pursuant to the existing administrative appeals procedures of the Department
25 and Arizona law.

26 K. Community Property, Decedents and Undeliverable Refunds. In resolving
27 disputes of divorced Claimants and in determining the process for determining the disposition of
28 undeliverable refunds and refunds of deceased Claimants, the Department shall exercise its
discretion under the statutes governing these matters.

L. Subsequent Notice. Status reports as to developments, if any, in the administration
of the Settlement will be posted on the Department's internet website, www.azdor.gov.

2. Plaintiffs' Counsel. Plaintiffs' counsel are Randall D. Wilkins, Paul V. Bonn, Brian J.
Campbell and D. Michael Hall of Bonn & Wilkins, Chartered, Phoenix, Arizona and Eugene O.

EXHIBIT B-1

1 Duffy and William A. Wiseman of O'Neil, Cannon, Hollman, DeJong S.C., Milwaukee, Wisconsin.
2 Plaintiffs' Counsel may be contacted in writing at: FERC2 Refund Litigation, P.O. Box 1289,
3 Phoenix, Arizona 85001-1289.

4 3. **Recommendation of Plaintiffs' Counsel.** Plaintiffs' Counsel have been engaged in the
5 Litigation of this dispute for 16 years. They have conducted a thorough and intensive examination
6 into the facts and law relating to the final phase of this Litigation — the entitlement of Claimants to
7 additional refunds and the delay and risks to Claimants in view of the defenses available to the
8 Department to reduce or avoid the payments of refunds otherwise due.

9 Among other things, the Settlement provides Claimants eligible for refunds under the terms of
10 the Settlement with certainty of payment and the elimination of further delay. Based upon their
11 evaluation of the benefits which the Settlement will provide to Claimants, Plaintiffs' Counsel have
12 advised Plaintiffs that the Settlement is fair, reasonable and adequate.

13 4. **Final Approval Hearing.** The Tax Court has preliminarily approved the Settlement.
14 However, final approval will not be granted until after the final Settlement approval hearing ("Final
15 Approval Hearing"). The Final Approval Hearing will be held before the Honorable Mark W.
16 Armstrong on _____, 2006, at _____ a.m., Maricopa County Superior Court, Northeast
17 Regional Court Center, 18380 North 40th Street, Phoenix, Arizona 85032. The purpose of the Final
18 Approval Hearing is to determine whether the Settlement should be finally approved by the Tax
19 Court. The Final Approval Hearing may be adjourned by the Tax Court from time to time without
20 further notice.

21 5. **Right to Appear at Final Hearing.** At the Final Approval Hearing, any Claimant may
22 appear in person or through counsel and be heard concerning the fairness, reasonableness and
23 adequacy of the Settlement. Claimants who support the proposed Settlement do not need to appear
24 at the hearing or take any other action to indicate their approval. However, no person will be heard
25 in opposition to the Settlement or the determination of attorneys' fees and costs and no papers
26 submitted by any person will be considered by the Tax Court unless, on or before _____,
27 2006, such person (a) files with the Clerk of the Maricopa County Superior Court, Central
28 Courthouse, 201 West Jefferson, Phoenix, Arizona 85003 a notice of his/her intention to appear,
29 together with proof of status as a Claimant and a written statement that details the specific objection
30 and basis for such objection; (b) if the objection concerns attorneys' fees, files an affidavit attesting
31 to whether the Claimant received the prior written notice of the Tax Court's fee hearing held on April
32 3, 1998, and whether the Claimant received any refunds under ITR 98-1, and (c) serves copies of any
33 papers filed with the Tax Court upon each of the following attorneys:

34 **PLAINTIFFS' COUNSEL**
35 Randall D. Wilkins, Esq.
36 FERC2 Refund Litigation

COUNSEL FOR DEFENDANTS
William A. Richards, Esq.
Senior Litigation Counsel - CIVIL DIVISION

EXHIBIT B-1

1 Attention: Objections to
2 FERC2 Settlement
3 P.O. Box 1289
4 Phoenix, Arizona 85001-1289

Attention: Objections
1275 West Washington
Phoenix, Arizona 85007-2926

All documents filed with the Tax Court shall be signed pursuant to **Rule 11, Ariz. R. Civ. P.**

6. **Common Fund Case.** A common fund case arises where a successful suit, brought by representative plaintiff(s), results in the creation of a monetary fund that benefits a limited and identifiable group similarly situated to the representative plaintiff(s). The 1998 Judgment determined that this case is a common fund case and that the total refunds and interest paid by the Department under the program implemented pursuant to ITR 98-1 constituted the common fund. The Settlement represents a compromise of disputed Claims to enforce the 1998 Judgment, which results in a monetary fund for the benefit of the Claimants who meet the eligibility requirements for a refund under the Settlement.

7. **Attorneys' Fees.** Consistent with the provisions of the 1998 Judgment, Plaintiffs' Counsel have applied for an award of 20 percent of the Common Fund under the Settlement for their services and expenses. If the Tax Court approves the Settlement, a hearing on the Attorneys' Fees Application will be held on _____, 2006 at _____ a.m., M.S.T., Maricopa County Superior Court, Northeast Regional Court Center, 18380 North 40th Street, Phoenix, Arizona 85032, immediately following the Final Approval Hearing. Any Claimant may appear in person or through counsel and be heard concerning the application of Plaintiffs' Counsel for the award of attorneys' fees and expenses. However, no person will be heard in opposition to Plaintiffs' Counsel's application and no papers submitted by any person will be considered by the Tax Court unless he or she files and serves all papers in the manner specified in paragraph 5 above.

8. **Change of Address.** If this notice reached you at an address other than the address printed on the notice or if you recently have moved, please send your current address to the Arizona Department of Revenue, P.O. Box 29099, Phoenix, Arizona 85038-9099, attention FERC Settlement. If you change your address before this case is finally resolved, you should immediately notify the Arizona Department of Revenue of that change in writing. If you filed a joint return for any of the years 1985 to and including 1990, please also include your spouse's name, social security number and current address and telephone number (if different).

9. **Examination of Papers.** This summary of the Settlement and the description of the Litigation is not intended to be complete or exhaustive. For a more detailed statement of the matters involved in this Litigation, including all the terms of the Settlement, you are referred to the Stipulation of Settlement dated April 19, 2006 and to the pleadings, motions, transcripts and other documents filed in this Litigation, including the 1998 Judgment, all of which are on file with the Clerk and which may be examined during regular business hours at the office of the Clerk of the Court Records, Maricopa County Superior Court, 601 West Jackson, Phoenix, Arizona 85003. The

EXHIBIT B-1

1 Stipulation of Settlement may also be reviewed at the Department's internet website at
2 www.azdor.gov and at Plaintiffs' Counsel's website at www.ferc2refunds.com.

3 10. **Further Proceedings.** If the Settlement is approved by the Tax Court, the process of
4 implementing the Settlement will begin without delay. Upon the final payment by the Department of
5 all sums due Claimants and Plaintiffs' Counsel, and satisfaction of all of the Department's
6 obligations under the Settlement, the Plaintiffs will file a satisfaction of the 1998 Judgment and any
7 final judgment entered pursuant to the Settlement. If the Settlement is not approved, the case will
continue to be prepared for trial or other judicial resolution of the claims and defenses on the issues
of whether Claimants are eligible for additional refunds and, if so, the amount of refunds due to
Claimants and whether the case should be certified as a class action.

8 **PLEASE DO NOT TELEPHONE THE JUDGE OR THE COURT CLERK'S OFFICE.**

9 Any correspondence or questions you may have about the matters in this notice may be directed to
the Department.

10 **PLEASE REMEMBER TO INCLUDE YOUR NAME, SOCIAL SECURITY**
11 **NUMBER AND CURRENT ADDRESS AND TELEPHONE NUMBER IN ALL**
12 **COMMUNICATIONS.** If you filed a joint return for any of the years 1985 to and including 1990,
13 please also include your spouse's name, social security number and current address and telephone
number (if different).

14 DATED this _____ day of April, 2006.

15
16 /s/ Mark W. Armstrong
17 Hon. Mark W. Armstrong
18 Judge of the Superior Court
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27 EXHIBIT B-1
28

1 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
2 **IN AND FOR THE COUNTY OF MARICOPA**

3 **SUSAN MORAN and JOHN UDALL,**

4 **Plaintiffs,**

5 **vs.**

6
7 **GALE L. GARRIOTT, in his capacity as**
8 **Director of the Arizona Department of Revenue,**
9 **the ARIZONA DEPARTMENT OF REVENUE**
10 **of the State of Arizona,**

11 **Defendants.**

No. TX 97-00119

No. TX 97-00131

No. TX 97-00150

(Consolidated)

**SUMMARY NOTICE OF PROPOSED
SETTLEMENT**

(Assigned to the Honorable
Mark W. Armstrong)

12 **SUMMARY NOTICE OF PROPOSED SETTLEMENT AND**
13 **HEARINGS ON PROPOSED SETTLEMENT**

14 **TO: ALL PRESENT AND FORMER FEDERAL EMPLOYEES WHO PAID ARIZONA**
15 **INCOME TAXES ON MANDATORY FEDERAL RETIREMENT CONTRIBUTIONS**
16 **DURING ANY ONE OR MORE OF THE YEARS 1985 TO AND INCLUDING 1990,**
17 **TOGETHER WITH THEIR SURVIVORS, SPOUSES, HEIRS, SUCCESSORS,**
18 **ESTATES AND PERSONAL REPRESENTATIVES AND WHO FOR ANY ONE OR**
19 **MORE OF THE YEARS 1985 TO AND INCLUDING 1990 HAVE NOT BEEN PAID A**
20 **REFUND OF ALL SUCH TAXES PAID.**

21 NOTICE IS HEREBY GIVEN THAT: on April 19, 2006 the parties to this litigation
22 ("Litigation") entered into a Stipulation of Settlement (the "Settlement") proposing to settle this
23 Litigation upon certain terms and conditions; and pursuant to an Order of the Tax Court, a hearing
24 will be held on _____, 2006 (the "Final Approval Hearing") at _____m. in the Arizona
25 Tax Court, Maricopa County Superior Court, Northeast Regional Court Center, 18380 North 40th
26 Street, Phoenix, Arizona 85032, for the purpose of determining whether terms of the Settlement
27 should be finally approved by the Tax Court and the amount to be awarded Plaintiffs' Counsel for
28 attorneys' fees and expenses. The hearing may be adjourned from time to time without further
notice.

EXHIBIT B-2

1 If you paid Arizona individual income taxes on mandatory federal retirement contributions
2 reported on your federal tax return during any one or more of the years 1985 to and including 1990,
3 you may be entitled to a refund. However, to receive a refund under the Settlement, you must have
4 filed an individual refund claim with the Arizona Department of Revenue before July 9, 1998, and
5 must meet the other eligibility requirements of the Settlement.

6 A federal employee refund Claimant may object to all or any of the proposed Settlement and
7 the application for attorneys' fees, **provided that any objection must be submitted in accordance**
8 **with the requirements stated in the Notice of Proposed Settlement and Settlement Hearings.**

9 The above description of the matters involved in this Litigation and proposed Settlement is
10 only a summary. You are referred to the pleadings, the Stipulation of Settlement and other papers
11 filed in the Litigation, which may be inspected during regular business hours at the office of the
12 Clerk of the Maricopa County Superior Court for a complete description of the terms thereof. If you
13 have questions concerning this Notice, you may obtain additional information in person at any
14 Arizona Department of Revenue office, or by written or telephone request at Arizona Department of
15 Revenue, P.O. Box 29099, Phoenix, Arizona 85038-9099, (602) 542-0700, attention FERC
16 Settlement.

17 In addition, copies of the "Notice of Proposed Settlement and Settlement Hearings," the
18 "Stipulation of Settlement" and the Tax Court's preliminary rulings concerning this Settlement are
19 also available at www.azdor.gov and from Plaintiffs' Counsel at www.ferc2refunds.com.

20 **PLEASE DO NOT CONTACT THE TAX COURT**
21 **OR THE CLERK'S OFFICE DIRECTLY FOR SUCH INFORMATION**

22 DATED: _____

23 /s/ Mark W. Armstrong
24 Hon. Mark W. Armstrong
25 Judge of the Superior Court

26
27
28 EXHIBIT B-2

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6
7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN THE ARIZONA TAX COURT

9 CLARK J. KERR and BILLIE SUE KERR,
10 husband and wife, SUSAN MORAN, STEVE
11 ALLEN and JOHN UDALL, individually and as
12 representatives of the class comprised of federal
employees who paid Arizona income taxes on
federal retirement contributions during one or
more of the years 1984 to date,

13 Plaintiffs,

14 v.

15 MARK J. KILLIAN, in his capacity as Director of
16 the Arizona Department of Revenue, the
ARIZONA DEPARTMENT OF REVENUE of
the State of Arizona,

17 Defendants.

18
19 STATE OF ARIZONA, ex rel., the ARIZONA
DEPARTMENT OF REVENUE,

20 Plaintiffs,

21 v.

22 CLARK J. KERR and BILLIE SUE KERR,
husband and wife,

23 Defendants.
24
25
26
27
28

No. TX 97-00119
No. TX 97-00131
No. TX 97-00150
(Consolidated)

JUDGMENT

(Assigned to the Honorable I. Sylvan Brown)

1 CLARK J. KERR and BILLIE SUE KERR,
2 husband and wife; AND THEIR ATTORNEYS,
3 BONN, LUSCHER, PADDEN & WILKINS,
4 CHARTERED and O'NEIL, CANNON &
5 HOLLMAN, S.C.,

6 Counterclaimants,

7 v.

8 STATE OF ARIZONA, ex rel., the ARIZONA
9 DEPARTMENT OF REVENUE,

10 Counterdefendants.

11 The Court determines that Bonn, Luscher, Padden & Wilkins, Chartered and O'Neil, Cannon
12 & Hollman, S.C. are entitled to a common fund award of attorneys' fees, having given notice and an
13 opportunity to any interested party to present evidence concerning the amount of an attorneys' fees
14 award, has considered all the evidence presented by interested parties and determines that there is no
15 just reason why an award of attorneys' fees for creation of the common fund of refunds (including
16 interest) should not be made a final judgment at this time.

17 Based upon the foregoing and good cause appearing therefor:

18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

19 1. That, as stated in this Court's decision of March 3, 1998 and April 7, 1998, which are
20 incorporated by reference, Plaintiffs' and Counterclaimants' Motion for Partial Summary Judgment
21 re: Common Fund Award for Years 1985 through 1990 is granted and the Arizona Department of
22 Revenue's Cross Motion for Partial Summary Judgment is denied.

23 IT IS FURTHER ORDERED:

24 2. Bonn, Luscher, Padden & Wilkins, Chartered and O'Neil, Cannon & Hollman, S.C.,
25 counsel for the Plaintiffs, are awarded attorneys' fees in the amount of twenty percent (20%) of the
26 common fund of taxes and compound interest for all refunds of Arizona income tax paid on federal
27 employee retirement contributions for the tax years 1985 through 1990, whether paid in cash or by
28 any other means, including by way of any credits or offsets. Said sums shall be paid by the
Department of Revenue to counsel for the Plaintiffs. These sums may be paid by the Department of
Revenue deducting the sum of 20% from the Refund to each federal employee, or if the Department

1 of Revenue fails to make such deductions, such sums shall be paid from such other funds of the State
2 of Arizona as the Department of Revenue may determine appropriate.

3 3. The award of attorneys' fees to counsel for Plaintiffs shall bear interest at the rate of
4 ten percent (10%) per annum from the date of this Judgment until paid.

5 4. The Department of Revenue shall provide an accounting to counsel for Plaintiffs of
6 the amount of each refund paid, whether paid in cash or by any other means, including by way of
7 credits or offsets, and the amount withheld, if any, from each refund. The Department of Revenue
8 shall provide an ongoing accounting of any future refunds paid for the tax years 1985 to 1990 to
9 federal employees which would have been part of the common fund, if paid at the time of, or prior to
10 this Judgment. The original accounting shall be made within thirty (30) days of the date of this
11 Judgment. The additional accountings shall be made at least every ninety (90) days following the
12 original accounting.

13 5. The costs and expenses incurred by the Department of Revenue in processing the
14 refunds, paying fees to counsel for the Plaintiff, and otherwise complying with this Judgment shall
15 be borne and paid by the Department of Revenue.

16 6. Bonn, Luscher, Padden & Wilkins, Chartered as representative of the two firms shall
17 pay to O'Neil, Cannon & Hollman, S.C. from the sums it receives from the Department of Revenue
18 that portion of the fees to which O'Neil, Cannon & Hollman, S.C. is entitled pursuant to the agreement
19 between the firms.

20 7. The payment of the attorneys' fees will be stayed pending appeal, if the State of
21 Arizona and Department of Revenue timely appeals from either the granting of the partial summary
22 judgment establishing the common fund or from the amount of the award of attorneys' fees. The stay
23 of payment, however, shall not affect the State's obligation to provide accountings as set forth in this
24 Judgment.

25 8. The court shall retain jurisdiction as may be necessary to oversee the administration
26 and implementation of this Judgment and to oversee the correction of any errors in the administration
27 or payment of refunds which the Department of Revenue fails to correct and which are brought to the
28 attention of the court.

9. The Court, having found there is no just reason for delay, expressly directs that this Judgment be entered at this time as a final judgment pursuant to rule 54(b), Ariz. R. Civ. P.

DONE IN OPEN COURT this 17 day of June, 1998.

15/ I. Sylvan Brown
Honorable I. Sylvan Brown
Judge of the Superior Court